



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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DONALD L. WOLFE, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
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September 26, 2006

IN REPLY PLEASE
REFER TO FILE:

EP-2

Ms. Bobbie Garcia
California Integrated Waste Management Board
Permitting and Enforcement Division
P.O. Box 4025, MS-10A
Sacramento, CA 95812-4025

Dear Ms. Garcia:

PROPOSED PERMIT IMPLEMENTATION REGULATIONS (ASSEMBLY BILL 1497)

Thank you for the opportunity to provide comments on the proposed Permit Implementation Regulations. As previously discussed in our June 5, 2006, letter, and further enumerated below, we **strongly** recommend that the proposed regulations be revised to avoid creating any conflict between the host jurisdiction's land use permit and the State's Solid Waste Facility Permit (SWFP).

As currently written, the proposed regulations would allow an SWFP be issued to a solid waste facility even though the SWFP may be in direct conflict with the facility's design/operational parameters (e.g., hours of operation, daily capacity, type of waste accepted, etc.) established by the host jurisdiction through the land use permit process. Furthermore, the proposed regulations would delete existing regulations which require facility operators to provide a copy of the land use permit when applying for an SWFP, and would instead allow the issuance of a SWFP (once the Enforcement Agency accepts the application as "Complete" and "Correct") even in situations where the facility has not yet been issued a local land use permit. Such a conflict is contrary to Public Resources Code Section 40053 which is aimed at ensuring that the California Integrated Waste Management Board Waste Board (Waste Board) does not adopt regulations which may limit or weaken the authority of a local government to impose a more restrictive standard on solid waste facilities within their jurisdiction.

Due to the proposed regulations' far-reaching public policy consequences, we request the Waste Board address this issue prior to the final adoption of the proposed Regulations. If this issue is not addressed, it would create the perception that the State government has abdicated its fiduciary responsibility to protect public health, safety, and

the environment by not collaborating with local governments on a most important of functions--permit consistency; create public confusion and a legal dilemma as to which permit governs; and, weaken the host jurisdiction's land use authority. Most importantly, we believe the impact of the proposed regulations will fall disproportionately on poor and disenfranchised communities because they lack the necessary resources to defend their interests. Ultimately, the proposed regulations would undermine the intent of Assembly Bill 1497 which is to improve the "conditions for communities with solid waste facilities located in their neighborhoods and ensure adequate consideration is given to environmental justice issues" [Assembly Bill 1497, Montanez, 2003].

The following comments are provided:

1. Title 27, Division 2, Chapter 4, Subchapter 3, Article 1, Section 21563(d)(6), Page 2, Line 15.

Specific Request—Delete the proposed new text: "The definition is only for purposes of determining when a permit needs to be revised and should not be utilized for making determinations relative to the California Environmental Quality Act (CEQA), Title 14, CCR Section 15000 et seq."

Discussion—The proposed new text is unnecessary, ambiguous, ill-defined, confusing, and may be interpreted to mean that a significant change activity is not subject to CEQA, or that the Local Enforcement Agency does not have the authority to require a new CEQA process and documentation for the proposed significant change activity.

2. Title 27, Division 2, Chapter 4, Subchapter 3, Article 2, Section 21570(f)(9), Page 4, Line 5.

Specific Request—Do not delete "Land Use and/or entitlements for the facility (e.g., Conditional Use Permits or zoning ordinance);" **OR** substitute the deleted text with the following: "a written confirmation by the host jurisdiction's planning agency or commission verifying that the proposed permit activity is consistent with the land use entitlements for the facility."

Discussion—Pursuant to Section 44012 of the Public Resources Code, the primary purpose of the SWFP is to ensure the protection of public health and safety and the environment. If the proposed regulations are adopted in their current form, we believe solid waste facilities will be issued an SWFP that may be inconsistent with facility's design/operational parameters established by the

host jurisdiction via the land use permit/entitlement. The criteria are often significantly more restrictive than the mitigation measures identified in the CEQA document. For example, the Environmental Impact Report for a recent transfer station expansion analyzed an 8,500 tons per day project. However, the approved land use permit only allows a maximum tonnage of 5,000 tons per day and places many restrictions upon the facility's operation which were not analyzed in the Environmental Impact Report. Since the land use permit is the primary vehicle for establishing the parameters for the "operation" of a solid waste facility, we do not believe it is possible for the Waste Board to determine if an SWFP application is complete and correct without ensuring consistency with the local land use permit. In addition, the staff proposal would undermine local governments' land use authority since it would create a legal quandary as to which permit conditions govern. Such a conflict is contrary to Public Resources Code Section 40053 which is designed to ensure that the Waste Board does not adopt any regulations which may limit or weaken the authority of a local government to impose a more restrictive standard on solid waste facilities within their jurisdiction.

The intent of Assembly Bill 1497 (Montanez, 2003) is to improve the "conditions for communities with solid waste facilities located in their neighborhoods and ensure adequate consideration is given to environmental justice issues." If the proposed text is adopted, it would also undermine the intent of Assembly Bill 1497 since it would prohibit the Waste Board-approve local enforcement agencies from verifying that the information contained in the SWFP application is consistent with the local land use permit. This is especially relevant since local land use conditions are often the mechanism by which jurisdictions address environmental justice concerns and other issues raised by the community.

Our proposal would ensure consistency without imposing/recommending any additional duties to the Waste Board and/or Local Enforcement Agencies.

3. Title 27, Division 2, Chapter 4, Subchapter 3, Article 2, Section 21620(a)(4), Page 9, Line 25.

Specific Request—Expand the Subsection to read as follows:

"(E) Increase in the facility's permitted site life and/or closure date."

Discussion—The above change will help address our concern expressed in item 2 above due to its potential significant impact on the community and the environment.

4. Title 27, Division 2, Chapter 4, Subchapter 3, Article 3, Section 21650(i), Page 12, Lines 16-19.

Specific Request—Expand the Subsection to read as follows: ". . . . The Enforcement Agency should be aware of and take into consideration other permits/entitlements (e.g., **Conditional Use Permit or Zoning ordinance**) and approvals when writing terms and conditions]."

Discussion—The above change will help address our concern expressed in item 2 above due to its potential significant impact on the community and the environment.

5. Title 27, Division 2, Chapter 4, Subchapter 3, Article 3, Section 21660.1(a)(7), Page 13, Lines 42 and 43.

Specific Request—Do not delete ". . . . (date, time, and location) for public review."

Discussion—By retaining the above text, it will help address the concerns expressed in item 2 since it would provide interested parties with key logistical information. Our request is consistent with similar requirements already incorporated in other sections of the proposed regulations, including Sections 21660.3(a)(7) and 21660.3(a)(7).

6. Title 27, Division 2, Chapter 4, Subchapter 3, Article 3.1, Section 21685(b)(6), Page 21, Line 27.

Specific Request—Do not delete "Land Use and/or Conditional Use Permits;" **OR** substitute the deleted text with the following: "a written confirmation by the host jurisdiction's planning agency or commission verifying that the proposed permit activity is consistent with the land use entitlements for the facility..."

Discussion—The above language will help address our concerns expressed in item 2 above.

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We thank you for your consideration of this request regarding issues that are of great importance to local governments. If you have any questions, please contact me at (626) 458-3502, Monday through Thursday, 7 a.m. to 5:30 p.m.

Very truly yours,

DONALD L. WOLFE
Director of Public Works


CARLOS RUIZ
Assistant Division Engineer
Environmental Programs Division

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cc: Each Member of the California Integrated Waste Management Board
Executive Director, California Integrated Waste Management Board (Mark Leary)
California Integrated Waste Management Board (Howard Levenson, Mark De Bie)
County of Los Angeles Department of Health Services (Ken Murray, Stan Uyehara,
Pete Oda)